

1  
2  
3 BILL NO. G-89-11-32 (AS AMENDED)

4 GENERAL ORDINANCE NO. Bush

5 AN ORDINANCE OF THE COMMON COUNCIL OF THE  
6 CITY OF FORT WAYNE, INDIANA REGULATING  
7 THE PLACEMENT OF NEWSRACKS ON PUBLIC  
8 PROPERTY.

9 WHEREAS, there is currently no legislation regulating  
10 the placement of newsracks on public property; and

11 WHEREAS, an Ordinance is necessary to permit the  
12 placement of newsracks on public property, while controlling  
13 the inconvenience, interference with pedestrian traffic and  
14 danger to the public that could be caused by unregulated  
15 placement of newsracks.

16 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
17 THE CITY OF FORT WAYNE, INDIANA THAT:

18 SECTION 1. Chapter 25 of the Municipal Code is hereby  
19 amended by adding a new Article VII. titled "Newsracks,  
20 Placement and Permit" which contains the following language:

21 Sec. 25-70. Definitions.

22 As used in this ordinance, the following terms shall have the  
23 following meanings, unless the context clearly indicates that  
24 a different meaning is intended:

25 "City," means the City of Fort Wayne, Indiana.

26 "Newsrack," means any self-service or coin-operated box,  
27 container, storage unit or other dispenser installed,  
28 used, or maintained for the display and sale of  
29 newspapers, news periodicals, or other written  
30 publications or periodicals.

31 "Parkstrip," means that area between the sidewalks and  
32 the curb of any street, and where there is no sidewalk,  
that are between the edge of the roadway and the  
property line adjacent thereto. Parkstrip shall also  
include any area within a roadway which is not open to  
vehicular travel.

"Roadway," means that portion of a street improved, the  
curb of any street, and where there is no sidewalk,  
designed, or ordinarily used for vehicular travel.

"Sidewalk," shall mean any surface provided for the  
exclusive use of pedestrians, on any public right of way  
under the jurisdiction of the City.

"Street," means all that area dedicated to public use  
for public street purposes and shall include, but not be  
limited to, roadways, parkstrips, alleys and sidewalks.

33 Sec. 25-71. Newsracks Prohibited.

(a) No person shall install, use or maintain any  
newsrack which projects onto, into or over any part of  
the roadway of any public street, or which rests, wholly  
or in part, upon, along or over any portion of the  
roadway of any public street.



(b) No person shall install, use or maintain any newsrack which in whole or in part rests upon, in or over any public sidewalk or parkstrip, when such installation, use or maintenance endangers the safety of person or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such newsrack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other objects permitted at or near said location.

Sec. 25-72. Standards for installation, maintenance and operation.

Any newsrack which in whole or in part rests upon, in or over any public sidewalk or parkstrip shall comply with the following standards:

(a) Newsracks shall not be placed in the residential use districts of the City without the written consent of the adjacent residential property owner, as set out in Sec. 25-71 of this Article.

(b) No newsracks shall exceed five feet in height, thirty inches in width, or two feet in thickness.

(c) Newsracks shall be placed only near a curb or adjacent to the wall of a building. Newsracks placed near the curb shall be placed no less than eighteen inches nor more than twenty-four inches from the edge of the curb. Newsracks placed adjacent to the wall of a building shall be placed parallel to such wall and not more than six (6) inches from the wall.

(d) No newsrack shall be chained, bolted or otherwise attached to any property without the permission of the owner or person in possession of the property.

(e) Newsracks may be chained or otherwise attached to one another.

(f) No newsrack shall be placed, installed, used or maintained:

- (1) Within a handicap curb cut, or ramp or within five feet of any marked crosswalk;
- (2) Within fifteen feet of the curb return of any unmarked crosswalk;
- (3) Within five feet of any fire hydrant, fire call box, police call box or other emergency facility;
- (4) Within five feet of any intersecting driveway, alley or street;
- (5) Within five feet ahead of, and twenty-five feet to the rear of, any sign marking a designated bus stop;
- (6) Within six feet of any bus bench;
- (7) At any location whereby the clear space for the passageway of pedestrians is reduced to less than six feet; or
- (8) Within three feet of any area improved with lawn, flowers, shrubs or trees or within three feet of any display window of any building abutting the sidewalk or parkstrip or in such manner as to



impede or interfere with the reasonable use of such window for display purposes.

(9) Within 250 feet (250') of another newsrack containing the same newspaper or news periodical, except that the Board of Public Works and Safety may permit two such newsracks at an intersection where such placement would not impair traffic or otherwise create a hazardous condition.

(10) At any location where the Board of Public Works and Safety determines that such placement would cause an undue safety or health hazard or unduly interfere with the right of the public to the proper use of the streets and thoroughfares or cause a nuisance.

(g) Each newsrack shall be maintained in a clean, neat and attractive condition and in good repair at all times.

Sec. 25-73. Application and permit.

(a) Applications may be made to and on forms approved by the Board of Public Works and Safety for rental permits allowing the installation of newsracks on public property along the streets and thoroughfares within the City respecting newspapers having a general circulation throughout the City.

Upon a proper application, the Board of Public Works and Safety shall grant said permit subject to the standards for installation, maintenance and operation set out in this Ordinance:

(b) The rental permit shall be granted upon the following conditions:

- (1) The permittee shall pay a rental fee which shall be twenty-five dollars (\$25.00) per year or part thereof, for each location where a newsrack is installed.
- (2) The permittee, upon the removal of a newsrack shall restore the property of the City to the same condition as when the device was initially installed, ordinary wear and tear excepted.
- (3) The permittee shall not use a newsrack for advertising purposes other than that dealing with the display, sale or purchase of the newspaper or periodical sold therein.
- (4) The permittee shall save and hold the City harmless from any and all liability for any reason whatsoever occasioned upon the installation and expense, such public liability insurance as shall protect permittee and City from all claims for damage to property or bodily injury, including death, which may arise from the operation under the permit or in connection therewith and such policy shall name the City as an additional insured, shall be in an amount not less than one hundred thousand dollars (\$100,000.00) combined single limit for any injury to persons and/or damaged property and shall not be cancelled or reduced by the insurance carrier without thirty days prior written notice to the City. A certificate of such insurance shall be provided to the City and maintained before and during the installation of such devices.



Sec. 25-74. Application denials and permit revocation.

(1) Application for and rental permits issued pursuant to this section may be denied or revoked by the Board of Public Works and Safety after notice and hearing and only for any of the following causes:

(a) Fraud, misrepresentation or any false statement contained in the application for such a permit;

(b) Violation of any provision of this ordinance.

(2) The content of any newspaper sold or any censorship thereof shall not be a good cause or reason for denial of a permit application or revoking a permit except that pornographic material which violates the general laws of the State of Indiana shall not be permitted to be sold from newsracks.

(3) Upon preliminary determination by the Board of Public Works and Safety to deny a permit application or to revoke a permit, the Board of Public Works and Safety shall issue notice of such preliminary determination to the applicant for a permit or to the permittee. The notice shall be in writing and state the specific reason for the preliminary determination denying the application or revoking the permit. Upon issuance of the preliminary determination to deny the application or revoke the permit, the applicant or permittee shall have seven (7) calendar days after receipt of the notice to remedy the cause set forth in the notice or appeal the preliminary determination of the Board of Public Works and Safety.

(4) If the applicant or permittee remedies the cause set forth in the notice issued pursuant to subsection (3) of this section within the time period set forth in the notice, the Board of Public Works and Safety shall either grant the application or rescind the revocation of the existing permit and no hearing on the preliminary determination shall be conducted.

(5) In the event the applicant or permittee elects to appeal the preliminary determination, the Board of Public Works and Safety will conduct a hearing concerning the causes set forth in the preliminary determination within fourteen (14) days of the date upon which the notice was issued, but in no event less than eleven (11) days after the issuance of such notice. After said hearing, if it is conducted pursuant to this ordinance, the Board of Public Works and Safety shall issue a final determination.

(6) The Board of Public Works and Safety shall have subpoena power to compel attendance of witnesses at the hearing for which this section makes provision. Included in the subpoena power contained herein is the power and duty to subpoena witnesses and compel the attendance of witnesses on behalf of the appellant, but all at the expense of the appellant.

(7) A person aggrieved by a decision of the Board of Public Works and Safety in refusing to grant or revoking a rental permit after the hearing set forth in subsection (5) of this section, shall have the right to appeal said decision to a court of competent jurisdiction.



Sec. 25-75. Determination of public nuisance.

Any violation of this ordinance is hereby declared to be a nuisance. In addition to any other relief provided by this ordinance the city attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this ordinance. Such application for relief may include seeking a temporary restraining order, preliminary injunction and permanent injunction. The city attorney may also sue for damages on behalf of the City.

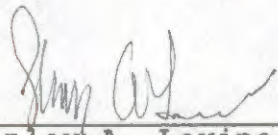
SECTION 2. Severability.

If any provision or term of this article, or any application thereof, is held invalid, the invalidity shall not affect other applications of the provision or terms of this article which reasonably can be given effect without the invalid provision or term for the application thereof.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

\_\_\_\_\_  
COUNCILMEMBER

APPROVED AS TO  
FORM AND LEGALITY.

  
\_\_\_\_\_  
Stanley A. Levine  
Legal Advisor to  
Fort Wayne Common Council



1 BILL NO. G-89-11-32

2 GENERAL ORDINANCE NO. \_\_\_\_\_

3 AN ORDINANCE OF THE COMMON COUNCIL OF THE  
4 CITY OF FORT WAYNE, INDIANA REGULATING  
5 THE PLACEMENT OF NEWSRACKS ON PUBLIC  
6 PROPERTY.

7 WHEREAS, there is currently no legislation regulating  
8 the placement of newsracks on public property; and

9 WHEREAS, an Ordinance is necessary to permit the  
10 placement of newsracks on public property, while controlling  
11 the inconvenience, interference with pedestrian traffic and  
12 danger to the public that could be caused by unregulated  
13 placement of newsracks.

14 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
15 THE CITY OF FORT WAYNE, INDIANA THAT:

16 SECTION 1. Chapter 25 of the Municipal Code is hereby  
17 amended by adding a new Article VII. titled "Newsracks,  
18 Placement and Permit" which contains the following language:

19 Sec. 25-70. Definitions.

20 As used in this ordinance, the following terms shall have the  
21 following meanings, unless the context clearly indicates that  
22 a different meaning is intended:

23 "City," means the City of Fort Wayne, Indiana.

24 "Newsrack," means any self-service or coin-operated box,  
25 container, storage unit or other dispenser installed,  
26 used, or maintained for the display and sale of  
27 newspapers or news periodicals.

28 "Parkstrip," means that area between the sidewalks and  
29 the curb of any street, and where there is no sidewalk,  
30 that are between the edge of the roadway and the  
31 property line adjacent thereto. Parkstrip shall also  
32 include any area within a roadway which is not open to  
vehicular travel.

"Roadway," means that portion of a street improved, the  
curb of any street, and where there is no sidewalk,  
designed, or ordinarily used for vehicular travel.

"Sidewalk," shall mean any surface provided for the  
exclusive use of pedestrians, on any public right of way  
under the jurisdiction of the City.

"Street," means all that area dedicated to public use  
for public street purposes and shall include, but not be  
limited to, roadways, parkstrips, alleys and sidewalks.

33 Sec. 25-71. Newsracks Prohibited.

34 (a) No person shall install, use or maintain any  
35 newsrack which projects onto, into or over any part of  
36 the roadway of any public street, or which rests, wholly  
37 or in part, upon, along or over any portion of the  
38 roadway of any public street.



DATED: 11-28-89.

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>1</u>	<u>8</u>		
<u>BRADBURY</u>		<u>✓</u>		
<u>BURNS</u>	<u>✓</u>			
<u>EDMONDS</u>		<u>✓</u>		
<u>GiaQUINTA</u>		<u>✓</u>		
<u>HENRY</u>		<u>✓</u>		
<u>LONG</u>		<u>✓</u>		
<u>REDD</u>		<u>✓</u>		
<u>SCHMIDT</u>		<u>✓</u>		
<u>TALARICO</u>		<u>✓</u>		

DATED: 4-10-90

ATTEST:

(SEAL)

SANDRA E. KENNEDY, CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ .M., E.S.T.

SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

PAUL HELMKE, MAYOR



BILL NO. G-89-11-32 (as amended)

4-3-90

*Committee of the Whole*

REPORT OF THE COMMITTEE ON REGULATIONS

JANET G. BRADBURY, CHAIRPERSON  
DAVID C. LONG, VICE CHAIRMAN  
EDMONDS, SCHMIDT, TALARICO

*Committee of the Whole*

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) of the Common Council  
of the City of Fort Wayne, Indiana regulating the placement  
of Newsracks on public property

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

_____	<i>Janet G. Bradbury</i>	_____	_____
_____	<i>D. Schmidt</i>	_____	_____
_____	<i>Ch. Edmond</i>	_____	_____
_____	<i>Samuel J. Talarico</i>	_____	_____
_____	<i>Mark E. Long</i>	_____	_____
_____	<i>Mark E. Long</i>	_____	_____
_____	<i>Mark E. Long</i>	_____	_____
_____	<i>Mark E. Long</i>	_____	_____
_____	<i>Mark E. Long</i>	_____	_____

DATED: 4-10-90

Sandra E. Kennedy  
City Clerk



BILL NO. G-89-11-32

table

REPORT OF THE COMMITTEE ON REGULATIONS

JANET G. BRADBURY, CHAIRPERSON  
DAVID C. LONG, VICE CHAIRMAN  
EDMONDS, SCHMIDT, TALARICO

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS

REFERRED AN (ORDINANCE) (~~XXXXXXXXXX~~ RESOLUTION) OF THE COMMON COUNCIL  
OF THE CITY OF FORT WAYNE, INDIANA REGULATING THE PLACEMENT  
OF NEWSRACKS ON PUBLIC PROPERTY  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~) XXXXXXXXXX

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

DATED:

Sandra E. Kennedy  
City Clerk